

Tab B

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ISSUE: What Kinds of Disciplinary Actions Can be Taken to Prevent the Misuse of the Security Classification System by Government Officials

DISCUSSION:

Executive Order 11652 expressly prohibits classification in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or a Department or to restrain competition or independent initiative. The Order also includes a general prohibition against classification "... to prevent for any other reason the release of information which does not require protection in the interest of national security." The sole administrative sanction prescribed by Section 13 of Executive Order 11652 is "administrative reprimand" and, it becomes operative only for "repeated abuse." There are no specific sanctions or range of sanctions for unauthorized release or disclosure of classified information. Classification and continuation of classification in violation of the Order are not explicitly subject to administrative sanction.

During the course of its deliberations, the Sub-Group examined the following significant factors related to the main issue:

- (a) The sufficiency of sanctions currently provided in Executive Order 11652.
- (b) The need for criminal sanctions for extreme misuses, such as use of classification to cover up criminal activities or gross mismanagement.
- (c) The question of whether the new Executive order should require that each person who has access to classified information execute a secrecy agreement as a condition of being granted access.
- (d) Preventative methods such as disciplinary measures, civil fines, criminal sanctions and increased use of polygraph tests.

The Sub-Group members were of the opinion that some sanctions are desirable for unauthorized disclosures, and that the problem of prosecuting those responsible for unauthorized disclosures may not necessarily result only from an unwillingness to pay the price of enforcing existing statutes. Rather, Sub-Group members agreed that existing statutes are generally not applicable to all unauthorized disclosures, such as anonymous leaks to the press.

Intelligence agencies have often refused, prior to any investigation of a leak, to declassify information determined to be essential for purposes of prosecution. It was the opinion of the Sub-Group members that this difficulty seems to be capable of resolution. They were persuaded that a refusal to undertake any criminal investigation without an advance commitment from the concerned agency to declassify this information not only may preclude the taking of adequate measures to prevent further disclosures,

but such policy very often may preclude fully informed and rational determination of whether or not it is actually appropriate to declassify such information or reveal intelligence sources and methods. The Sub-Group members were of the opinion that investigations may often be necessary for purposes unrelated to prosecution, such as to provide valuable insight into the vulnerabilities of security procedures or into methods for corrective management actions. Existing policy may often preclude consideration of factors necessary to an informed decision of whether or not to declassify.

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